

REMARKS

Claim objections

The Examiner has objected to claims 42-50 because of a spelling error. Applicant has corrected the misspelled word “side wall” and replaced it with “sidewall”. In addition, the Examiner objected to claim 50 because it did not further limit independent claim 42. Applicant has amended claim 50 to further limit claim 42. In particular, the applicant amended claim 50 so that the receptacles are different sizes. Since the applicant has corrected the above informalities claim 42 and any claim that depends therefrom should now be in a condition for allowance.

Claim rejections - 35 U.S.C. § 102(b)

The Examiner has rejected claims 1, 3, 4, 6, 7, 42, and 48-50 under 35 U.S.C. § 102(b), as being anticipated by Sakwa. The applicant has amended independent claims 1 and 42 so as to better distinguish that which applicant regards as the invention from the above cited prior art references.

Regarding independent claims 1 and 42, the applicant has added further limitations to better describe the receptacle that contains the rollerball. In particular the applicant has further amended these claims by adding the limitation “and said receptacles having an end wall, said end walls of said receptacles being generally parallel to each other and perpendicular to said sidewalls.” Sakwa does not disclose applicant’s arrangement and as such these claims should now be in condition for allowance.

Regarding claims 3, 4, 6, 7, 48-50, the Examiner rejected these claims because they

09/842,371

depended on rejected independent claims 1 and 42. For the reasons stated above, as to claims 1 and 42, the rejection of claims 3, 4, 6, 7, 48-50 should also be withdrawn.

Claim rejections - 35 U.S.C. § 103

The Examiner has rejected claims 1-31 and 40-51, under 35 U.S.C. § 103, as being unpatentable over Roehrich in view Briedenbach. As previously stated, the applicant has amended independent claims 1 and 42. Roehrich does not teach or suggest of receptacles having an end wall, said end walls of said receptacles being generally parallel to each other and perpendicular to said sidewalls, as seen in Fig. 3, and as such these claims should now be in condition for allowance

Regarding claims 2-30, 40-41 and 43-50, the Examiner rejected these claims because of their dependency on rejected independent claims 1 and 42. For the above stated reasons these claims should also be in a condition for allowance.

Regarding claim 51, applicant has withdrawn this claim.

Regarding the obviousness rejection of Roehrich in combination with the other cited references, the applicant has submitted a rule 1.132 affidavit with this paper. The applicant affirms in this affidavit the commercial success of the present invention, in the cosmetic market today, is due to the claimed features of the invention and not due to unclaimed features. To date the applicant has sold more than \$4,000,000 worth of the present invention. Buyers of the applicant's invention include such cosmetic industry mega giants as Estee Lauder, Avon, Britney Spears, and Victoria's Secret, etc.

MPEP § 2141 III


09/842,371

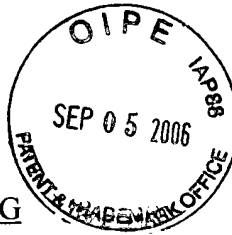
“Objective evidence or secondary considerations such as unexpected results, commercial success, long felt need, failure of others, copying of others, licensing, and skepticism of experts are relevant to the issue of *obviousness* (emphasis added) and must be considered in every case in which they are present.”

The applicant brings this to the attention of the Examiner to further evidence that what the applicant regards as the invention is nonobvious in the cosmetic industry.

CONCLUSION

For the foregoing reasons, applicant's claims are patentable over the cited prior art and the application should be in condition for allowance.

Respectfully submitted,

Thomas A. O'Rourke
Reg. No.: 27,665
BODNER & O'ROURKE, L.L.P.
425 Broadhollow Road
Melville, New York 11747
(631) 249-7500



CERTIFICATE OF MAILING

I hereby certify that the foregoing documents were mailed by first class mail, postage prepaid, in an envelope addressed to the Hon. Commissioner for Patents and Trademarks, PO Box 1450; Alexandria, VA 22313-1450, this 31st day of August, 2006.

A handwritten signature in cursive script, appearing to read "Thomas A. O'Rourke".

Thomas A. O'Rourke